

REMARKS

The Office Action dated August 7, 2007, has been received and carefully considered. In this response, claims 1, 2, 7-15, 18, and 19 have been amended. No new matter has been added. Entry of the amendments to claims 1, 2, 7-15, 18, and 19 is respectfully requested. Reconsideration of the outstanding rejections in the present application is also respectfully requested based on the following remarks.

I. THE ANTICIPATION REJECTION OF CLAIMS 1-8, 10, 11, AND 14-19

On pages 2-4 of the Office Action, claims 1-8, 10, 11, and 14-19 were rejected under 35 U.S.C. § 102(e) as being anticipated by Hadi Salim et al. (U.S. Patent No. 6,625,118). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. In re Sun, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Id. "In addition, the prior art reference must be enabling." Akzo N.V. v. U.S. International Trade Commission, 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987).

That is, the prior art reference must sufficiently describe the claimed invention so as to have placed the public in possession of it. In re Donohue, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985). Such possession is effected only if one of ordinary skill in the art could have combined the disclosure in the prior art reference with his/her own knowledge to make the claimed invention. Id..

Regarding claim 1, the Examiner asserts that Hadi Salim et al. discloses the claimed invention. Applicant respectfully disagrees. However, in order to forward the present application toward allowance, Applicant has amended claim 1 to more specifically define the claimed invention, and specifically those features that differentiate the claimed invention from Hadi Salim et al., as well as the other cited references. In particular, Applicant respectfully submits that Hadi Salim et al. and the other cited references, taken either alone or in combination, fail to disclose, or even suggest, a method for admission control of packet flows in a network comprising: initiating a flow of packets across the network; determining a flow rate associated with a plurality of packets entering or exiting the network; marking at least one predetermined bit in at least one of the plurality of packets if the flow rate is greater than a predetermined rate; and controlling the initiated

flow of packets across the network based at least in part on the marking of the at least one predetermined bit in the at least one of the plurality of packets, as presently claimed. Thus, the claimed invention allows control of an initiated flow of packets across a network before any congestion occurs. In contrast, Hadi Salim et al. discloses detecting actual congestion in a network (see column 6, lines 6-9) and fails to even mention a predetermined rate. Accordingly, is it respectfully submitted that claim 1 is allowable over Hadi Salim et al.

At this point Applicant would like to remind the Examiner that, as stated in MPEP § 2131, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Regarding claims 2-8, 10, 11, and 14-17, these claims are dependent upon independent claim 1. Thus, since independent claim 1 should be allowable as discussed above, claims 2-8, 10, 11, and 14-17 should also be allowable at least by virtue of their dependency on independent claim 1. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in

combination. For example, claim 15 recites that the predetermined rate is raised to a value above the allocated network bandwidth for a predetermined period of time. As discussed above, Hadi Salim et al. fails to disclose or even suggest such a feature.

Regarding claims 18 and 19, these claims recite subject matter related to claim 1 and have been amended similar to claim 1. Thus, the arguments set forth above with respect to claim 1 are equally applicable to claims 18 and 19. Accordingly, it is respectfully submitted that claims 18 and 19 are allowable over Hadi Salim et al. for the same reasons as set forth above with respect to claim 1.

In view of the foregoing, it is respectfully requested that the aforementioned anticipation rejection of claims 1-8, 10, 11, and 14-19 be withdrawn.

## II. THE OBVIOUSNESS REJECTION OF CLAIMS 9, 12, AND 13

On page 4 of the Office Action, claims 9, 12, and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hadi Salim et al. (U.S. Patent No. 6,625,118) in view of Davies et al. (U.S. Patent No. 6,483,805). This rejection is hereby respectfully traversed.

It is respectfully submitted that the aforementioned

obviousness rejection of claims 9, 12, and 13 has become moot in view of the deficiencies of the primary reference (i.e., Hadi Salim et al.) as discussed above with respect to independent claim 1. That is, claims 9, 12, and 13 are dependent upon independent claim 1 and thus inherently incorporate all of the limitations of independent claim 1. Also, the secondary reference (i.e., Davies et al.) fails to disclose, or even suggest, the deficiencies of the primary reference as discussed above with respect to independent claim 1. Indeed, the Examiner does not even assert such. Thus, the combination of the secondary reference with the primary reference also fails to disclose, or even suggest, the deficiencies of the primary reference as discussed above with respect to independent claim 1. Accordingly, claims 9, 12, and 13 should be allowable over the combination of the secondary reference with the primary reference at least by virtue of their dependency on independent claim 1. Moreover, claims 9, 12, and 13 recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination. For example, claim 9 recites that the control of the initiated flow of packets across the network is based at least in part on priorities or importance of the plurality of packets and the initiated flow of packets. Hadi Salim et al. fails to disclose

or even suggest such a feature.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claims 9, 12, and 13 be withdrawn.

### III. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

Hunton & Williams LLP

By 

Thomas E. Anderson

Registration No. 37,063

TEA/vrp

Hunton & Williams LLP  
1900 K Street, N.W.  
Washington, D.C. 20006-1109  
Telephone: (202) 955-1500  
Facsimile: (202) 778-2201

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